

ORDINANCE NO. 2009-21

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING CHAPTER 18 SECTION 10 IMPACT FEES FOR POLICE, FIRE, PARKS & RECREATION AND GENERAL ADMINISTRATION SERVICES PROVIDING FOR DEFINITIONS; PROVIDING FOR IMPOSITION OF IMPACT FEES; PROVIDING FOR CREDITS; PROVIDING FOR ACCOUNTABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, anticipated future development in the Town of Davie requires an increase in lands, facilities and equipment (public facilities) to provide police, fire, parks and recreation and general government services to accommodate the needs of residents and commercial properties in the new development; and

WHEREAS, the Town has determined that new development shall contribute its fair share of the cost of providing new public facilities to provide police, fire, parks and recreation and general government services to that new development; and

WHEREAS, this Ordinance is intended to be 1) consistent with the practice for allocating a fair share of the cost of new public facilities to users as established by judicial standards established through case law, and 2) in compliance with the Florida Statutes; and

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. CHAPTER 18, SECTION 10, is hereby created to assess impact fees for Police, Fire, Parks & Recreation, and General Administration Services;

SECTION 2. Authorization:

This Ordinance is enacted pursuant to the general police power, the authority granted to municipal corporations by Florida Constitution and Florida Statutes;

SECTION 3. Purpose and Intent:

This Ordinance is for the purpose of requiring that new development pays for its fair share of public facilities through the imposition of impact fees which will be used to finance, defray or reimburse the Town for all or a portion of the costs of public facilities which serve such development. The amount of each impact fee shall be calculated based upon the gross square footage of non-residential

development, number of residential dwelling units, or other appropriate methodology which insures that the fee is roughly proportional to the impacts of new development on public facilities.

SECTION 4. Findings

The Town Council hereby finds that: Impact Fees collected pursuant to this ordinance shall not be used to cure existing deficiencies in level of service. New residential and non-residential development imposes increased and excessive demands upon Town public facilities. Planning, economic and demographic studies project that new development will continue and will place ever-increasing demands on the Town to provide public facilities to serve the new development. To the extent that new development places demands upon public facilities, those demands should be satisfied by shifting the responsibility for financing the provision of such public facilities from the public to the development creating the demands. The Town Council, after careful consideration of the Burton & Associates, Inc. - Impact Fee Study results and the experience of other similarly situated Towns and Cities, finds that the imposition of impact fees to finance specified public facilities, the demand for which is created by new development, is in the best interests of the general welfare of the Town and its residents, is equitable, and does not impose an unfair burden on new development.

SECTION 5. Applicability:

Unless expressly excepted or exempted, this ordinance applies to all impact fees imposed by the Town to finance public facilities attributable to new development, including without limitation:

Police Impact Fees

Fire Impact Fees

Parks & Recreation Impact Fees, and

General Government Impact Fees

SECTION 6. Exemptions – The provisions of this Ordinance do not apply to:

Taxes and special assessments;

Fees for processing development applications;

Fees for enforcement of or inspections pursuant to regulatory ordinances;

Fees imposed pursuant to a reimbursement agreement between the Town and a property owner for that portion of the cost of a public facility paid for by the property owner which exceeds the need for the public facility attributable to, reasonably related to, and roughly proportional to the development;
Fees to mitigate impacts on the environment; or Fees imposed, levied or collected by other governmental agencies including subdivisions of the state and federal government.

SECTION 7. Definitions – As used in this Ordinance:

Capital improvement means Land, equipment or facilities required to provide the subject service. Capital improvement also includes design, engineering and inspection, testing, planning, legal land acquisition and all other costs associates with construction of a public facility.

Collection means the point at which the impact fee is actually paid over to the Town

Commitment means earmarking impact fees to fund or partially fund capital improvements serving new development

New development or development project means and includes any project undertaken for the purpose of development, including without limitation a project involving the issuance of a permit for construction, reconstruction, of change of use, but not a project involving the issuance of a permit to remodel, reconstruct or replace an existing structure if the remodeled, reconstructed or new structure is

not larger than the existing structure if non-residential and does not contain more dwelling units if residential.

Dwelling unit means one or more rooms in a building or a portion of a room, designed, intended to be used, or actually used for occupancy by one family for living and sleeping quarters, and containing one kitchen only, and includes a mobile home, but not hotel or motel units.

Impact fee means any monetary exaction imposed by the Town as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the cost of or repayment of costs previously expended from other Town funds for capital improvements relating to the project.

Impose means to determine that a particular development project is subject to the collection of impact fees as a condition of development approval.

Non-residential development project means all development other than residential development projects.

Residential development project means any development undertaken to create a new dwelling unit or units.

SECTION 8. Notice and Hearing required for Establishing or Increasing and Impact Fee:

Prior to establishing or increasing of any impact fee, the Town Council shall hold a public hearing at which oral and written testimony may be given.

Notice of the time and place of the public hearing shall be consistent with similar notice requirements of the Town, unless specifically required by State statute or other authority.

Council action to establish or increase any impact fee shall be taken by Resolution.

Any costs incurred by the Town in preparing for and conduction the public hearing may be recovered as a part of the impact fees which are the subject of the hearing.

SECTION 9. Imposition, Calculation and Collection of Impact Fees:

Except as provided in this Ordinance and any amendment to this Ordinance, the Town shall impose impact fees as a condition of approval of all new development projects.

Impact fees shall be collected at the time, and as a condition of issuance of a building permit.

SECTION 10. Impact Fee Accounts:

The Town shall establish an impact fee account for each type of capital improvement for which an impact fee is imposed, and impact fees collected shall be deposited in each such account according to improvement type and the funds of the account shall not be comingled with other funds of the Town.

Each impact fee account shall be interest bearing and the interest earned shall become a part of the account.

The funds of each account shall be expended for the capital improvements for which impact fees were collected.

SECTION 11. Use of Impact Fee Proceeds

Impact fee proceeds shall be expended only for the type of capital improvements for which they were imposed, calculated and collected and according to the time limits and procedures established in this ordinance. Impact fee may be used to pay the principal, interest and other costs of bonds, notes and other such obligations issued or undertaken by or on behalf of the Town to finance such improvements.

SECTION 12. Protests and Appeals:

A person may protest or challenge the imposition of a fee imposed pursuant to this ordinance by filing with the Town Clerk within thirty (30) days imposition of the impact fee(s) a written notice of appeal with a full statement of the grounds, and an appeals fee of two hundred dollars, or such amount as may be fixed from time to time by resolution of the Town Council. The Town may continue processing the development application if the notice of appeal is accompanied with a bond or other security in an amount equal to the impact fee.

At a regular meeting following the fining of the appeal, the Town Council shall fix a time and place for hearing of the appeal and the Town Clerk shall mail notice of hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice and the determination of the Council shall be announced at the conclusion of the hearing or at the next regular meeting of the Council. The determination of the Council shall be final.

SECTION 13. Variance and Exceptions:

Petitions for variances or exceptions to the imposition of impact fees shall be made in accordance with the procedures in Section 12.

SECTION 14. Credits:

A property owner who dedicates land, equipment or facilities or otherwise contributes funds for capital improvements, as defined in this ordinance, may be eligible for a credit for such contribution against the impact fee otherwise due.

The Town Engineer shall determine 1) whether the contribution meets the capital improvement needs for which the particular impact fee has been imposed; and 2) whether the contribution will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds; and 3) the value of the developer contribution. In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee.

SECTION 15. In the event of a conflict between the provisions of this ordinance and the provisions of any other ordinance or resolution establishing or amending impact fees, the provisions of this ordinance shall govern.

SECTION 16. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

CREATING CHAPTER 18 SECTION 10 IMPACT FEES

SECTION 17. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 18. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS 17th DAY OF June, 2009

PASSED ON SECOND READING THIS 19th DAY OF August, 2009


MAYOR/COUNCILMEMBER

Attest:


asst TOWN CLERK

APPROVED THIS 19th DAY OF August, 2009

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Joseph Montopoli, Fire Chief/EMC 954-797-1842

PREPARED BY: Frank Suriano, Assistant Chief Admin 954-797-1843

SUBJECT: Ordinance

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING CHAPTER 18 SECTION 10 IMPACT FEES FOR POLICE, FIRE, PARKS & RECREATION AND GENERAL ADMINISTRATION SERVICES PROVIDING FOR DEFINITIONS; PROVIDING FOR IMPOSITION OF IMPACT FEES; PROVIDING FOR CREDITS; PROVIDING FOR ACCOUNTABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. {Approved on First Reading June 17, 2009. In a voice vote, the vote was as follows: Mayor Paul - yes; Vice-Mayor Crowley - out of room; Councilmember Caletka - yes; Councilmember Luis - yes; Councilmember Starkey - yes.} (tabled from July 29, 2009)

REPORT IN BRIEF: The Ordinance is for the purpose of requiring that new development pays for its fair share of public facilities through the imposition of impact fees which will be used to finance, defray or reimburse the Town for all or a portion of the costs of public facilities which serve such development. The amount of each impact fee shall be calculated based upon the gross square footage of non-residential development, number of residential dwelling units, or other appropriate methodology which insures that the fee is roughly proportional to the impacts of new development on public facilities.

PREVIOUS ACTIONS: Ordinance 89-25, Ordinance 97-013. On July 29, 2009, Council tabled this item to August 5, 2009.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s): Ordinance